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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,579	01/29/2004	Wayne E. Vick	45626/284123	6171
23370	7590	01/11/2006	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/767,579	VICK, WAYNE E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	James R. Brittain	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 October 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 35,36,38 and 41-60 is/are pending in the application.
- 4a) Of the above claim(s) 45-54 is/are withdrawn from consideration.
- 5) Claim(s) 55-60 is/are allowed.
- 6) Claim(s) 35,36 and 41-44 is/are rejected.
- 7) Claim(s) 38 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10032005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Election/Restriction***

Claims 45-54 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. These claims are withdrawn because of applicant's constructive election for prosecution of a different invention that was elected by original presentation.

### ***Double Patenting***

Claim 38 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 55. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35, 36, 41, 42 and 44 are rejected under 35 U.S.C. §103(a) as being unpatentable over Landy (WO 99/61209) in view of Wall (US 301940).

Landy (figures 1, 2, 4) teaches a device for tightening a strap around freight comprising a body capable of being rotated in the form of the reel 110 and comprising a means to hold the strap in the form of a slide and a first head extending from each end of the reel 110 that is

received in corresponding slots of the torsion arm 126; and a clamp 102 coupled to the body by frame 104 for holding a second end of the strap and comprising two clamp arms 158, 146. The difference is that the tightening device of Landy lacks a cam rotatably coupled to the clamp for securing the at least two clamp arms at a second end. However, Wall (figures 1-4) teaches in figure 4 that the clamping arms can be rotated and secured together by a cam, e, wherein provides a positive lock beyond that which would be capable from a spring. As it would be beneficial of the clamp of Landy, to exchange the spring with a cam in view of Wall teaching that it is desirable to secure clamping arms together by a cam. As to claim 44, the handle 126 of the device of Landy is an integrated portion of the body.

Claim 43 is rejected under 35 U.S.C. §103(a) as being unpatentable over Landy (WO 99/61209) in view of Wall (US 301940) as applied to claim 35 above, and further in view of Royball (US 4913608).

Further modification of the tightening device of Landy such that the torsion arm is capable of being removed from the first head would have been obvious in view of Royball teaching that the use of a box wrench within the recess 38 in the torsion head is a well known means by which the reel can be rotated.

*Allowable Subject Matter*

Claims 55-60 are allowed.

*Response to Amendment*

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching,

suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Wall teaches the use of a screw threaded cam, e, as providing a strong force to secure the pivoted arms of the strap engaging clamp together. Such positive engagement provides the capability of increasing the force so as to be sure of maintaining the strap in the clamp as indicated on page 1, lines 55-61 and this serves as motivation to modify the device of Landy.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB